of the parties. Finally, in New Jersey alone, the courts raise no presumption whatever, so that the allegation must be established by parol evidence.[7] An attempt has been made to treat the three positive rules of presumption as not mutually exclusive, by allowing the time when the anomalous indorsement was made to determine which rule should apply. Thus, if made before delivery to the payee, it will be presumptively the signature of a co-maker; if after delivery but before indorsement by the payee, presumptively that of a guarantor to the maker; if after indorsement by the payee, presumptively that of an indorser.[8] The same presumptions are usually applied also as between the original parties to the instrument.[9]

The general rule is that all these presumptions are rebuttable. Parol evidence has, however, been rejected on three grounds. (1) Such evidence would be varying a written instrument.[10] But as the very reason for admitting it is that the contract is ambiguous, this rule seems inapplicable. (2) Such evidence is admissible only as between the original parties and not as against a holder in due course.[11] (3) Such evidence, when offered to prove that the obligation assumed was a guaranty, is inadmissible as violating the Statute of Frauds.[12] These doctrines, however, are now obsolete, and parol evidence is almost universally admitted to show the actual intent of the parties.[13]

Where the Negotiable Instruments Law is in force the confusion arising from these various presumptions is done away with. The anomalous indorser is treated as a regular indorser,[14] except that his obligation is owed to the payee as well as to subsequent parties.[15] And parol evidence of a different intention is not admissible.[16] Only one case, apparently, is not provided for by the statute. Where a bill of exchange, payable to the maker, is indorsed by a third party as backer to the acceptor,[17] it would seem, although at least one case has held otherwise,[18] that the statute excludes the indorser from any liability to the maker.

ADMISSIONS OF PARTY'S PREDECESSORS IN TITLE AS EVIDENCE AGAINST HIM. — The rule that a party's extra-judicial admissions are competent evidence against him rests upon the broad ground that any former statements contrary to his present claim tend to show his unreliability.[1] Unless pro-

[7] Elliott *v.* Moreland, 69 N. J. L. 216.

[8] Good *v.* Martin, 95 U. S. 90.

[9] *Co-maker:* Ballard *v.* Burton, 64 Vt. 387. *Guarantor:* Milligan *v.* Holbrook, 168 Ill. 343. *Indorser:* Temple *v.* Baker, 125 Pa. St. 634; Phelps *v.* Vischer, 50 N. Y. 69. *No presumption:* Chaddock *v.* Vanness, 35 N. J. L. 517.

[10] Heath *v.* Van Cott, 9 Wis. 516.

[11] Schneider *v.* Schiffman, 20 Mo. 571.

[12] Temple *v.* Baker, 125 Pa. St. 634. *Contra,* Ford *v.* Hendricks, 34 Cal. 673. See AMES, CASES ON SURETYSHIP, 107.

[13] Good *v.* Martin, 95 U. S. 90.

[14] NEGOTIABLE INSTRUMENTS LAW, § 64.

[15] *Ibid.*, § 64, 1.

[16] Baumeister *v.* Kuntz, 42 So. 886 (Fla.). But see Kohn *v.* Consolidated Co., 63 N. Y. Supp. 265.

[17] See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 50, 77, 141–3, 221.

[18] Haddock, Blanchard, & Co. *v.* Haddock, 118 App. Div. 412; 103 N. Y. Supp. 584. See 22 HARV. L. REV. 300.

[1] 2 WIGMORE, EVIDENCE, § 1048.

bative force is added to the evidence by the further fact that the declaration was against interest when made, an admission is offered, not as affirmative proof of the matter contained therein, but merely to show the party's propensity to contradict himself. It is necessary, therefore, that the declaration be against interest only at the time of the trial.[2] When property rights are in issue, the rule is extended to include admissions made by a party's predecessor in title, provided that such statements were made while the declarant was still in possession;[3] for, since both the declarant and the party against whom the declaration is to be introduced have had identically the same interest in the subject matter, contradictory statements by them arouse suspicion. Hence the extension applies not only to realty,[4] but also to personalty,[5] including non-negotiable choses in action.[6] Thus the declarations of a former holder of a promissory note are admissible against an indorsee who took after maturity,[7] or with notice of defects.[8]

An imperfect understanding of the principle of admissions has led to some confusion in the decisions. It is often said that the reason for admitting such declarations is that the declarant would not have made an admission prejudicial to his own interest unless it had been true.[9] This erroneously makes the test the prejudicial character of the statement when made, instead of at the time of the trial. It frequently happens, where the statements were made by a predecessor in title, that they can be put in either as admissions or as declarations against interest by one now deceased; but this double possibility should not obscure the principle upon which the doctrine of admissions rests.

Another source of confusion, in actions concerning realty, is the statement sometimes seen in the cases,[10] and reflected in a recent decision, that the admissions of a party or of his predecessors in title are competent, not as evidence of title or lack of it, but only to show the nature and extent of possession. *Gilmartin* v. *Buchanan*, 119 N. Y. Supp. 489 (Sup. Ct. App. Div.). The argument is that a parol disclaimer of title is inoperative by reason of the statute of frauds.[11] But this assumes that a legal title has been shown to have vested in the declarant, which is sought to be divested by this parol evidence.[12] Such a situation, however, does not begin to cover the entire field of cases in which the issue may be one of title and not of possession only.[13] Where the construction of a deed is in doubt, as in a boundary dispute[14] like that of the principal case; or where the legal effect of the

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[2] State *v.* Anderson, 10 Ore. 448, 454.

[3] Lady Dartmouth *v.* Roberts, 16 East 334; Woolway *v.* Rowe, 1 A. & E. 114; Gibblehouse *v.* Stong, 3 Rawle (Pa.) 437.

[4] Jackson *v.* Bard, 4 Johns. (N. Y.) 230; Blake *v.* Everett, 1 Allen (Mass.) 248. See Smith *v.* Martin, 17 Conn. 399, 401.

[5] Holt *v.* Walker, 26 Me. 107. *Contra*, Coit *v.* Howd, 1 Gray (Mass.) 547.

[6] Abbott *v.* Muir, 5 Ind. 444.

[7] Robb *v.* Schmidt, 35 Mo. 290. *Contra*, Paige *v.* Cagwin, 7 Hill (N. Y.) 361.

[8] Glanton *v.* Griggs, 5 Ga. 424.

[9] See Chadwick *v.* Fonner, 69 N. Y. 404, 407.

[10] See Jackson *v.* Shearman, 6 Johns. (N. Y.) 19, 21. See also People *v.* Holmes, 166 N. Y. 540, 546; Hunter *v.* Trustees of Sandy Hill, 6 Hill (N. Y.) 407, 410.

[11] See Jackson *v.* Cary, 16 Johns. (N. Y.) 302, 306.

[12] See Jackson *v.* Cole, 4 Cow. (N. Y.) 587, 593.

[13] Jackson *v.* Myers, 11 Wend. (N. Y.) 533, 536.

[14] Jackson *v.* M'Call, 10 Johns. (N. Y.) 377; Smith *v.* Powers, 15 N. H. 546; Tomlin *v.* Cox, 19 N. J. L. 76; Deming *v.* Carrington, 12 Conn. 1.

very deed relied upon in proof of title is called in question by the grantee's admission that he held merely as trustee for another, who had paid the purchase money,[15] or that the deed was a fraud upon creditors,[16] or had been antedated;[17] admissions, like any other parol evidence, are competent to prove the state of the title. The doctrine of admissions is to be kept distinct also from the rule that declarations, by one in possession, relating to the character or extent of his possession, are admissible as part of the *res gestæ*, giving color to the act of possession.

RECENT CASES.

BANKRUPTCY — INVOLUNTARY PROCEEDINGS — EFFECT OF CHANGE OF OCCUPATION. — A was engaged in mercantile pursuits during the period when the debts scheduled in a petition in bankruptcy against him were contracted, and the assets acquired or owned. At the dates of the act of bankruptcy, and of the filing of the petition, he was engaged in farming. *Held*, that he is nevertheless amenable to bankruptcy proceedings. *Re Burgin*, 173 Fed. 726 (D. Ct., N. D., Ala.). See NOTES, p. 393.

BANKRUPTCY — PREFERENCES — EXCHANGE OF PROPERTY. — A buyer of cows advanced part of the purchase price. The bankrupt within the four months period delivered the cows giving credit for the advance. *Held*, that the delivery is not a preference. *Templeton* v. *Kehler*, 173 Fed. 575 (Dist. Ct., E. D. Pa.).

Upon the assumption that the buyer had reasonable cause to believe a preference was intended, the case seems wrong on principle. There is, however, sanction for it in the authorities. See *Mills* v. *Virginia-Carolina Lbr. Co.*, 164 Fed. 168. Obviously there can be no distinction between delivery of chattels and payment of money. In either case if the bankrupt at the time of delivery or payment owes this creditor an antecedent debt, such delivery is a preference. *In re Wolf*, 98 Fed. 84. Thus payment of the purchase price within ten days after delivery of the goods under a contract for a so-called "cash sale" is a preference. *In re Morrow & Co.*, 134 Fed. 686. But it is not necessary that the exchange of property and money be actually simultaneous to protect the creditor. *In re Davidson*, 109 Fed. 882. It is submitted that if, after the creditor has parted with title and all control over the property, the bankrupt delivers chattels or money in exchange within the four months' period, such delivery should be deemed a preference. Whether title has passed should be determined by the intent of the parties according to the usual rules in the law of sales. See *Bussey* v. *Barnett*, 9 M. & W. 312.

BILLS AND NOTES — ANOMALOUS INDORSER — PRIMA FACIE LIABILITY. — A made a note payable to B. Before delivery to B, X signed his name on the back. *Held*, that the *primâ facie* liability of X is that of a co-maker. *Borden* v. *Hornthal*, 65 S. E. 513 (N. C.).

BILLS AND NOTES — STATUTES — NEGOTIABLE INSTRUMENTS LAW: EFFECT ON STATUTE MAKING USURIOUS NOTES VOID. — N. Y. Am'd L. 1879, c. 538, § 5, declared void all notes given for usurious consideration. The Negotiable Instruments Law provides that a holder in due course is free from defenses avail-

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[15] Gibblehouse *v.* Stong, *supra.*
[16] Norton *v.* Pettibone, 7 Conn. 319.
[17] Cook *v.* Knowles, 38 Mich. 316.